Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	

REPLY COMMENTS OF

MONTANA INDEPENDENT TELECOMMUNICATIONS SYSTEMS MITS

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INTRODUCTION

Montana Independent Telecommunications Systems (MITS)[1] hereby files its reply comments in response to the Federal Communications Commission's (Commission's or FCC's) June 8, 2004, Notice of Proposed Rulemaking seeking comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) concerning the process for designation of eligible telecommunications carriers (ETCs) and the Commission's rules regarding high cost universal service support.[2] The FCC seeks comments on whether the Joint Board's recommendations should be adopted, in whole or in part, in order to preserve and advance universal service, maintain competitive neutrality, and ensure long-term sustainability of the universal service fund.

ETC DESIGNATION PROCESS

As explained in its initial comments, MITS supports the FCC's adoption of mandatory minimum federal guidelines to be used by state commissions when evaluating ETC designations and certifications, as well as by the FCC when it evaluates ETC designations in instances where state commissions lack jurisdiction. State commissions, however, must also have maximum flexibility to establish additional criteria and guidelines for both ETC designations and ETC annual certifications. MITS believes that ETC designation policies should be focused on promoting the universal service principles set forth by Congress in the 1996 Telecommunications Act. In particular, service to rural subscribers should not be

[1] MITS' members include Central Montana Communications, InterBel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, and Triangle Telephone Cooperative Association, serving portions of Montana, North Dakota and Wyoming, and CC Communications, serving portions of Nevada.

[2] *See Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004) (*ETC High-Cost NPRM*); *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004).

compromised or degraded as a result of the ETC designation process. Unfortunately, if not reined in, the wholesale, overly liberal designation of multiple ETCs in rural areas will result in the size of the fund growing to increasingly unsupportable levels, the degradation of service quality in rural areas, and the inability of rural carriers to continue to build and maintain robust networks that provide not only the services supported by the Federal universal service program, but also access to important advanced services which are becoming increasingly essential to the quality of life in rural areas.

The majority of parties responding to the NPRM agree that permissive federal ETC designation guidelines should be established.[3] Such guidelines are entirely consistent with the plain language of Section 214 of the Telecommunications Act of 1996, which mandates that only eligible telecommunications carriers can receive Federal universal service support.[4] Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations and requires that such designations must be "consistent with the public interest, convenience, and necessity."[5]

MITS agrees that guidelines such as those outlined in the Joint Board's Recommended Decision will serve to preserve and advance universal service, maintain competitive neutrality and ensure long-term sustainability of the universal service fund. Preservation and sustainability of the fund was cited often in comments as justification for such guidelines. Many parties believe that the runaway growth of the fund can be effectively curtailed by the adoption of such guidelines. State commissions expressed concerns that the

[3] Support for such guidelines comes from many industry segments such as state commissions (see comments of the Regulatory Commission of Alaska, the California PUC, the Iowa Utilities Board, the Missouri PSC, the New York Department of Public Service and the Oregon Public Utilities Commission), incumbent LECs, and consumer advocates such as NASUCA.

[4] 47 U.S.C. § 254(e).

[5] 47 U.S.C. § 254(e)(2).

liberal grant of ETC status to multiple carriers has contributed to the excessive growth of the fund. For example, the California PUC believes the "adoption of financial, technical and service quality guidelines and more in-depth evaluation of an ETC application is reasonable considering the need to preserve and maintain the universal service fund."[6]

The ETC designation process has too often been used to fund the artificial promotion of competition at the expense of the application of sound universal service policies. MITS disagrees with those who argue that the number of ETCs should not be limited in rural areas.[7] It is absurd to believe that Congress intended to use the USF to support multiple carriers in areas where costs are so high, and customer densities so low, that even a single carrier cannot survive without USF support. CenturyTel reports that in the last three years, nearly sixty wireless carriers have been granted ETC status and are receiving approximately $30 million in high cost support in CenturyTel's service areas. According to CenturyTel, some of its most rural study areas have as many as six competitive ETCs drawing support.[8]

Of course, some wireless carriers argue that this is entirely appropriate and that the '96 Act dictates that USF money should be used to ensure that consumers, even in rural areas, have access to multiple competitive telecommunications providers. In fact, Western Wireless argues ". . . public interest demands that the benefits of providing universal service support to competitive carriers be the determining factor in any reform measures."[9] However, as explained by TDS: ". . . the Act mandates a comparable *level of service* rather

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[6] See Comments of the People of the State of California and the Public Utilities Commission of the State of California on Page 5. Also, see the comments of the Regulatory Commission of Alaska on Page 1,

[7] For example, see comments of General Communications, Inc., at pages 9 & 10 and comments of Nextel Partners, Inc. on page 8.

[8] See CenturyTel's comments on page 4.

[9] See comments of Western Wireless on page 12.

than comparable competitive alternatives across markets. In many high-cost areas, comparable service can best be achieved by providing support to a single carrier."[10]

Furthermore, although wireless service certainly has value to consumers in rural areas, support for wireless carriers should not occur if it harms the ability of rural wireline carriers to continue to build and maintain their networks. Consumers in rural areas such as those served by the MITS companies rely on local telephone companies to connect them to the rest of the world. These companies have engineered and built robust, scalable networks and provide an ever-increasing variety of affordable, high quality services customers have come to expect. These companies provide not only basic "universal service," but also advanced services such as DSL and video conferencing. Rural schools and health care facilities have become increasingly dependent on advanced services. Interactive video classrooms provide distance learning opportunities, linking students and teachers, in elementary through post-secondary schools, hundreds of miles apart. Telehealth networks connect patients in rural clinics and Indian health offices with physicians in hospitals that are, likewise, hundreds of miles away.

The networks provided by wireless carriers are simply not adequate substitutes for the networks provided by the wireline local exchange companies. MITS agrees with various parties who hold that most consumers, at this time, do not consider wireless service an adequate substitute for wireline service. GVNW, for example, challenges the assertion that wireless service is a substitute for wireline service.[11] NASUCA's views are consistent stating that only a very small number of consumers have replaced their wireline service

[10] See comments of TDS Telecommunications Corporation, page 6.

[11] See comments of GVNW Consulting, Inc. at page 6.

entirely with wireless service and thus wireless service is a long ways from meeting the test of Section 254(c)(1)(B) - - being subscribed to by a substantial majority of customers.[12]

Therefore, it is prudent, necessary, and, in spite of the arguments by some parties to the contrary, legal that the FCC adopt federal guidelines for states to consider in proceedings to designate ETCs under Section 214.[13] MITS agrees that federal guidelines should be established that apply to all ETC proceedings, and that a more rigorous review of ETC applications for areas served by rural carriers is appropriate. In particular, MITS supports the adoption of mandatory minimum guidelines regarding an ETC applicant's financial resources, commitment and ability to provide supported services throughout the entire study areas, ability to remain functional in emergencies, adherence to service quality and consumer protection measures, and levels of local usage offered as part of basic service. States should retain maximum flexibility to adopt additional standards or guidelines as appropriate.

MITS also strongly endorses rigorous evaluations with respect to whether or not additional ETC designations in rural areas are consistent with the public interest, convenience and necessity. Several parties stated that multiple ETC designations are presumptively inconsistent with the public interest in certain situations. MITS has proposed to the Montana Public Service Commission that multiple ETC designations are inappropriate in rural areas that are characterized by a density of five access lines or less per mile. In its *Recommended Decision*, the Joint Board suggested that one relevant factor in considering whether or not additional ETC designation is in the public interest in any area may be the

[12] See comments of NASUCA at page 8.

[13] For example, United States Cellular, apparently unhappy with the Fifth Circuit's interpretation of section 214(e), argues unconvincingly that the Commission lacks jurisdiction to adopt guidelines for ETC designations. As noted by the Joint Board in paragraph 10 of its *Recommended Decision*, federal guidelines are clearly consistent with the Fifth Circuit's decision in *Texas Office of Public Utility Counsel v. FCC*, FCC, 183 F.3d 393, 418 (5th Cir. 1999) (*TOPUC v. FCC).*

level of per-line support.[14] NASUCA offers an interesting proposal that is consistent with the Joint Board's suggested per-line threshold for ETC designations. NASUCA recommends that in rural study areas receiving $30 per line per month in support or more, it should be presumed that only one ETC -- for now, the ILEC -- should be designated. In rural study areas receiving $20 per line per month or more, but less than $30 per line per month, it should be presumed that only one ETC in addition to the ILEC should be designated. There should be no presumed limit on the number of ETCs in rural areas receiving less than $20 per line per month in support.[15]

Even AT&T recommends that the Commission adopt a more precisely defined cost-benefit test for public interest determinations, quantifying the potential benefits (*e.g.,* consumer choice and affordability) as measured against the incremental cost to the Universal Service Fund. If the Commission does not adopt such a test, however, it should at least issue a national benchmark of per-line support, above which the presumption would be that designation of multiple ETCs is not in the public interest.[16]

SCOPE OF SUPPORT

The Joint Board recommended that the scope of high-cost support be limited to a single connection ("primary line") that provides access to the public telephone network. The rationale provided was that limiting support to a single connection would be more consistent with the goals of Section 254 of the Act than the present system, would be necessary to

[14] See paragraph 43 of the Joint Board's *Recommended Decision*. The Joint Board explained that if the per-line support is high enough, the state may be justified in limiting the number of ETCs in that study area because funding multiple ETCs in such areas could impose strains on the universal service fund.

[15] See NASUCA comments on page 46.

[16] See AT&T's comments at page 32.

preserve the sustainability of the universal service fund, would send more appropriate entry signals in rural and high-cost areas, and would be competitively neutral.

As explained in its initial comments, MITS opposes the Joint Board's primary line recommendations as does an overwhelming majority of the other parties that submitted initial comments in this proceeding. Criticisms of the primary line proposal are numerous and widespread across the telecommunications industry. According to many of the parties submitting comments in this docket, adopting the Joint Board's primary line proposals would:

- be inconsistent with the principles of the Telecommunications Act;
- harm consumers;
- be subject to gaming by industry participants;
- be a detriment to the further investment by carriers in rural areas;
- be overly administratively burdensome if not unworkable; and,
- be inconsistent with traditional jurisdictional separations of costs and revenues and would result in the inability of rural carriers to recover their reasonably and prudently incurred costs.[17]

OTHER ISSUES

MITS believes the primary issue to be addressed in this proceeding is the excessive growth in the size of the fund which, if unchecked, will jeopardize the sustainability of the fund. Although much of the fund's growth over the last few years can be attributed to several factors such as the creation of the schools and libraries program and the movement of

[17] As described by Beacon Telecommunications Advisors, L.L.C., adoption of the Joint Board's primary line restriction would likely cause local exchange companies to experience a shortfall of interstate revenues thereby raising potential confiscation claims.

significant cost recovery from access charges to the USF, we believe **the most significant threat to the viability of the fund is the continuing wholesale designation of additional ETCs, especially wireless ETCs in rural areas.**[18] We believe that adoption of federal guidelines for use in ETC designation and certification proceedings, coupled with a more rigorous application of public interest analyses, will significantly mitigate this threat.

In addition, we believe support for competitive ETCs should be based on the CETC's own costs and those costs should be reported and audited. Handing out hundreds of millions of dollars without such safeguards is extremely irresponsible. In the case of wireless CETCs, we believe the approach outlined in the comments of the Rural Telecommunications Associations has merit and warrants further analysis by the Commission.[19] This approach, which represents ". . . a hard fought negotiated consensus among OPASTCO, RICA, and RTG" is intended to be an interim plan which could be adopted pending the implementation of a long-term rural USF mechanism to succeed the plan adopted in the Rural Task Force Order. The interim plan would apply a tiered series of "safe harbor" ratios for determining a wireless CETC's per-line support as an alternative to a primary line restriction. Such an approach recognizes the need to control the growth in the size of the fund without generating the detrimental effects of a primary line limitation. The plan can be summarized as follows:

Tier IV Wireless Carriers - Carriers that have 100,000 or fewer subscribers would be eligible to receive 80 percent of the study area average per-line support received by the incumbent local exchange carrier (ILEC) that offers service to the customer.

Tier III Wireless Carriers - Carriers that have between 100,001 and 500,000 subscribers would be eligible to receive 40 percent of the study area average per-line support received by the ILEC that offers service to the customer.

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[18] For more information on the significant upward pressure on the size of the USF caused by the designation of wireless ETCs, see NASUCA's comments on pages 6 - 10.

[19] See comments of Rural Telecommunications Associations, pages 5 - 16.

Tier II Wireless Carriers - Carriers that have over 500,000 subscribers, but do not possess a national footprint would be eligible to receive 20 percent of the study area average per-line support received by the ILEC that offers service to the customer.

Tier I Wireless Carriers - Carriers with a national footprint would receive 0 percent support.

According to the Rural Telecommunications Associations, the ratios were derived from a comparison of wireline and wireless investment data and recognize that smaller stand-alone wireless carriers operating in high-cost areas need more support than larger regional or national carriers. The ratios would serve as a safe harbor level of support for wireless CETCs to be used if a wireless CETC opts not to report its actual costs for purposes of determining its per-line high-cost support. If a wireless CETC believes that its actual costs justify a higher level of support than it would receive under the safe harbor ratio, then it could choose to report its costs in order to receive a greater level of support, up to either the level of per line support received by the ILEC offering service to the customer or the statewide average per-line support, whichever is greater. Wireless carriers would be allowed to submit a cost study using generally accepted accounting principles that sufficiently justifies their costs in a manner that approximates the results obtained by ILEC cost studies. In addition, wireline CETCs could also file cost studies under the plan. For wireless carriers that have obtained CETC status prior to the implementation of this plan, there would be a two year transition period, after which they would begin to receive support based either on the ratio that applies to their particular tier or based on their own costs.

The Rural Telecommunications Association's plan offers an appropriate approach to reduce the future growth of high-cost USF support, addresses the inequities in the current portability rules, and provides a much more efficient and fair distribution of USF support. By adopting this interim plan in lieu of the Joint Board's primary line recommendation, the

Commission will protect the viability of the USF while continuing to further the goal of extending high quality, affordable wireline and wireless services throughout the rural parts of the country as the Joint Board and Commission contemplate a long-term support mechanism for rural service areas. This plan could ensure that all ETCs receive sufficient support to achieve affordable and reasonably comparable services and rates in rural areas, as required by the Telecommunications Act of 1996.

CONCLUSION

MITS urges the Commission to adopt the Joint Board's recommended proposals that mandatory minimal federal guidelines be established for evaluating applications for ETC designation and for reviewing annual ETC certifications. Additionally, state commissions must have maximum flexibility to establish their own criteria and guidelines for ETC designations and certifications. MITS further urges the Commission to focus its efforts in this proceeding on preserving and advancing the universal service principles set forth by Congress in the 1996 Telecommunications Act. Excessive emphasis on promoting competition has too often eclipsed universal service goals and principles. Service to rural subscribers should not be compromised or degraded as a result of misguided ETC designation or certification processes that place a higher priority on promoting competition than on preserving and advancing universal service.

Finally, MITS urges the Commission to reject the Joint Board's recommendation that high cost support be limited to a single connection providing access to the public telephone network. While MITS shares the Joint Board's concerns over the excessive growth of the universal service fund, the evidence indicates that the recent growth is primarily due to the liberal designations of ETCs. Adoption of mandatory minimum guidelines for ETC designations and certifications should adequately mitigate further excessive fund growth.

RESPECTUFULLY SUBMITTED this 21st day of Sept., 2004.

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Montana Independent Telecommunications Systems

On Behalf Of:

CC Communications
Central Montana Communications
InterBel Telephone Cooperative
Nemont Telephone Cooperative
Northern Telephone Cooperative
Project Telephone Company
Triangle Telephone Cooperative Association